



Fisheries and Oceans Canada
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Pêches et Océans Canada

CLASSIFICATION
GCCMS #: 2019 009 00122
EKME #: #####
4024421

To: Jonathan Wilkinson
Pour:

Date:

Object: **MEETING WITH NORTHERN PULP AND MINISTER MCKENNA ON**
Objet: **FEBRUARY 27, 2019**

From / Rhea King, Regional Director, Aquatic Ecosystems
De:

Via: Mary-Ellen Valkenier, Regional Director General

Mullen

FEB 25 2019

Additional approvals:
Autre(s) approbation(s):

Stephen Sharzer, Senior General Council, Legal Services

Philippe Morel, Assistant Deputy Minister, Aquatic Ecosystems

Serge Doucet, Regional Director General, Gulf Region (approved electronically)

☐ Material for the Minister
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☒ Information

Remarks: This briefing note was developed in consultation with the following
Remarques: regions/sectors:

Gulf region, Aquatic Ecosystems (Maritimes)

Distribution:

Drafting Officer/
Rédacteur:

Kaitlin Stansfield (902-717-1457)/ Kerri Graham / CC



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Approved by Mary-Ellen Valkenier,
RDG Maritimes Region

FEB 21 2019

Docket #: 2019 009 00122
Security Classification: UNCLASSIFIED
EKME # 4024421

SCENARIO NOTE

MEETING WITH NORTHERN PULP AND MINISTER MCKENNA ON FEBRUARY 27, 2019

Overview

The purpose of the meeting is to discuss the Northern Pulp Nova Scotia effluent replacement project with Minister McKenna, representatives of Northern Pulp of Nova Scotia Corporation, Chief Paul of Pictou Landing First Nation, and delegates of the Northumberland Fishermen's Association.

The key issue that will be raised during the meeting is Northern Pulp Nova Scotia's effluent replacement project. Northern Pulp Nova Scotia (NPNS) Corporation intends to install a new effluent treatment system that will involve the construction of a new submerged pipe and associated marine outfall. The project has met with resistance from Indigenous communities, fish harvesters in the southern Gulf of St. Lawrence, the Province of PEI, and other groups.

The Northumberland Fishermen's Association is one of the six accredited multi-species harvester organizations in the Gulf of Nova Scotia that form part of the Gulf Nova Scotia Fleet Planning Board (GNSFPB) who represent over 500 core licence holders. Ronnie Heighton is the president of the GNSFPB and also a member of the board of directors of the Northumberland Fishermen's Association.

1. Northern Pulp Nova Scotia Effluent Replacement Project

NPNS operates a kraft (paper) mill located in Abercrombie Point, New Glasgow, Nova Scotia. The mill has been in operation since 1967 and currently produces bleached softwood kraft market pulp. The Nova Scotia Government initially agreed to build and operate a treatment facility for the mill's process effluent. In 1995, the system was refurbished to meet newly introduced legislation under Environment and Climate Change Canada's *Pulp and Paper Regulations*, under Section 36 of the *Fisheries Act*.

In May 2015, with the enactment of the *Boat Harbour Act*, the use of the provincially-owned treatment facility for the treatment of effluent from the mill will not be permitted past January 30, 2020. To be in compliance with the *Boat Harbour Act*, NPNS intends to install a new effluent treatment system that will involve the construction of a new submerged pipe and associated marine outfall to be located in the Northumberland Strait.

In May 2017, DFO received a *Request for Review* application from NPNS for the construction of a new submerged pipe. It was determined that there was missing information; as such, the application was considered incomplete. DFO is still awaiting additional information from the

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proponent in order to complete the review and determine whether the project will require a *Fisheries Act* Authorization to proceed.

On October 21, 2018, there was a leak from the pipe transporting effluent from the mill to the current treatment facility. The next day, NPNS presented its new design for the effluent treatment facility to stakeholders. The pipe had been moved further from the original proposed location at the mouth of Pictou Harbour to a location nearby at Caribou. The local fishers coalition expressed continued opposition. On October 23, a local newspaper reported that fishers forced a survey boat that was mapping a potential route for NPNS's new effluent pipe back to shore. RCMP were seen at the scene. Both boats dispersed without incident and there were no further issues.

Through the fall of 2018, the survey of the proposed pipeline route continued to be blocked by protestors from the local fishing community and Pictou Landing First Nation. On December 18, 2018, the Nova Scotia Supreme Court granted a temporary injunction to prohibit blockades of the strait while the proponent completes its pipeline survey. The surveys were not conducted before the ice moved into the Northumberland Strait, preventing the work. NPNS has indicated that they will likely attempt to conduct the work in the spring.

The new proposed effluent pipe route travels across land for approximately 11 kilometers then approximately 4 kilometers out into the Northumberland Strait adjacent to the local PEI ferry route. This new route will travel through a Marine Refuge, the Scallop Buffer Zone in Scallop Fishing Area 24 (SFA-24). It discharges at the edge of the Marine Refuge boundary. This Marine Refuge in SFA-24 forms part of the DFO Gulf Region's Other Effective Area Based Conservation Measures that contribute to Canada's Marine Conservation Targets. The conservation objective is to protect juvenile lobster habitat by restricting the activity of scallop dragging. If a new activity such as the effluent discharge is permitted in or around this area and later deemed incompatible with the stated conservation objectives, loss of Marine Refuge status may occur, in whole or in part.

The Oceans Program from DFO's Gulf Region coordinated a meeting on November 1, 2018 with the Gulf Nova Scotia Fleet Planning Board (GNSFPB) and the Fisheries Protection Program to continue the discussion about NPNS effluent pipe overlap with the Marine Refuge in SFA-24 and to provide information on the DFO process for reviewing the project. Clarifications were conveyed to the GNSFPB on a number of questions such as: the roles and responsibilities of DFO with respect to the proposed effluent treatment plan project, regulations that apply for the discharge of effluent in pulp and paper mills, criteria for establishing Marine Refuges in Canada, and regulatory measures currently in place for Scallop Buffer Zone Marine Refuges in the Southern Gulf of St. Lawrence.

The project is currently required to undergo a provincial Class 1 Environmental Assessment (EA) process as opposed to the more extensive Class 2 process, or federal EA process, as this effluent treatment facility project is a modification to an existing project, not the construction of a new facility.

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The Prince Edward Island Fishermen's Association (PEIFA) has joined the GNSFPB in their efforts to stop the NPNS project. Both the PEIFA and GNSFPB are concerned about the health of the ecosystem and more specifically about the impact of the effluent on fish and its habitat and the survival of lobster larvae in the vicinity of the pipe outfall. They are requesting that further studies be conducted as part of the environmental assessment process. Discharge of the effluent and any potential impacts from the effluent are covered under Section 36 of the *Fisheries Act*, which is administered by Environment and Climate Change Canada.

On November 28, 2018, the Ministers of DFO and Canadian Environmental Assessment Agency (CEAA) received a request from Senators calling for a federal EA of the project. The Nova Scotia Environmental Assessment application for the new treatment facility was submitted to Nova Scotia Environment on January 31, 2019 and was posted on the Nova Scotia Environmental Assessment website on February 7, 2019 with a request for comments by March 9, 2019. CEAA is reviewing the information provided for the provincial EA and intends to release a decision prior to the completion of the provincial process on whether the project will be required to undergo a federal EA.

DFO is reviewing the document and will provide expert advice to Nova Scotia Environment by the March 9, 2019 deadline. Upon initial review of the EA application, DFO believes there is enough information to provide advice on a recommendation for significant effects determination to Nova Scotia Environment; however, it is missing specific detailed information previously requested in 2017 that is required to complete DFO's regulatory review process.



Indigenous Considerations

DFO has been made aware that a 1993 agreement between the federal government and Pictou Landing First Nation on the management of the Boat Harbour Treatment area for the plant requires the federal government to involve and keep fully informed Pictou Landing First Nation on any negotiations and/or discussions held by the federal government with NPNS.

The Province of Nova Scotia notified Chief Paul by email of the registration of the project for a provincial EA on February 6, 2019. The email noted that a hardcopy of the Registration Document for the proposed project would be delivered the next day. Also on February 6, legal counsel for Pictou Landing First Nation sent an email to the province of Nova Scotia stating "Pictou Landing First Nation hereby notifies you that it objects to the Province now imposing a 30 day response period on responding to the NPNS application and environmental assessment report without advance notice to Pictou Landing First Nation and an opportunity for Pictou Landing First Nation to respond." The First Nation is also seeking further funding from the province to allow them to complete the review and continue consultations.

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DFO will continue to participate in the Consultation process; however, if a *Fisheries Act* Authorization is not required, there would appear to be no conduct on the part of the department that would trigger the duty to consult, but program staff will continue to provide expert advice during the consultations.

Minister's Objectives

Your overall objective for the meeting is to monitor the state of affairs and lend help as needed through expert advice while the situation unfolds.

Key Messages

- **The Department of Fisheries and Oceans' role, under Section 35 of the *Fisheries Act*, is to review physical impacts from proposed construction projects to determine if there could be serious harm to fish or the habitat of fish which are part of a commercial, recreational or Aboriginal fishery.**
- **In May 2017, the Department received a *Request for Review* application from Northern Pulp for the construction of a new submerged outfall pipe; however, DFO is currently awaiting additional information in order to complete our review.**
- **DFO will make regulatory decisions on the physical impacts of the project; however, Environment and Climate Change Canada or Nova Scotia Environment are the lead agencies as it relates to the effluent.**
- **DFO will continue to participate in the consultation process with Pictou Landing First Nation.**



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Stephen Sharzer, Senior General Council, Legal Services

Philippe Morel, Assistant Deputy Minister, Aquatic Ecosystems

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Remarques: regions/sectors:

Gulf region, Aquatic Ecosystems (Maritimes) *approved by email Feb 22/19.*

Distribution:

Drafting Officer/
Rédacteur:

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Stephen Sharzer, Senior General Counsel and Head Legal Services


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